

These are the tentative rulings for civil law and motion matters set for Thursday, July 3, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 2, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. Telephone appearances through June 2014 will continue to be governed by the current Local Rules. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0061478 U.S. Bank Trust, N.A. vs. Bracken, Theresa A.

Defendant's Demurrer to the Complaint is overruled. Defendant is ordered to file and serve an answer or general denial on or before July 8, 2014. (CCP§1167.3.)

It is noted that defendant has failed to establish that plaintiff has been served with the current demurrer. Even if defendant properly served plaintiff, the demurrer would still be overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) The complaint complies with CCP§1166 and is sufficient to withstand demurrer.

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2. M-CV-0061570 Darnell, Shawn, et al vs. Hanaway, John

Defendant's Demurrer to the Complaint is overruled. Defendant is ordered to file and serve an answer or general denial on or before July 8, 2014. (CCP§1167.3.)

A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) The complaint complies with CCP§1166 and is sufficient to withstand demurrer.

The court notes that defendant filed an answer on June 30, 2014.

3. S-CV-0030874 Powers, Craig vs. East West Partners-Tahoe, Inc.

The demurrer and motion to dismiss are continued to July 31, 2014 at 8:30 a.m. in Department 40 pursuant to the ex parte order entered on June 27, 2014.

4. M-CV-0058024 Perry, Todd vs. Wells Fargo Home Mortgage

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be heard on **Tuesday, July 8, 2014 at 8:30 a.m. in Department 42:**

Defendant Wells Fargo Bank's (Wells Fargo) Demurrer to Aldea Homes/TKR Properties' Cross-Complaint

Ruling on Request for Judicial Notice

Wells Fargo's request for judicial notice is granted pursuant to Evidence Code section 452. The court, on its own motion, also takes judicial notice of plaintiff's second amended complaint filed on February 13, 2014.

Ruling on Demurrer

The demurrer is overruled. The function of a demurrer is to test the legal sufficiency of the pleadings, not the truth of the allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) In keeping with this analysis, the court deems the allegations in the pleadings to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) As recognized by both parties, the allegations in the SAC are pertinent to Wells Fargo's challenge of the cross-complaint. The SAC alleges that the defendants, which include Wells Fargo, Aldea Homes, and TDK Properties, "knowingly and willfully conspired, engaged in a common enterprise, and engaged in a

common course of conduct to accomplish the wrongs complained of herein. The purpose and effect of the conspiracy, common enterprise, and common course of conduct complained of was, inter alia, to financially benefit Defendants and the expense of Plaintiff by engaging in fraudulent activities. Defendants accomplished their conspiracy, common enterprise, and common course of conduct by misrepresenting and concealing material information regarding the servicing of loans, and by taking steps and making statements in furtherance of their wrongdoings as specified herein. Each Defendant was a direct, necessary and substantial participant in the conspiracy, common enterprise and common course of conduct complained of herein, and was aware of its overall contribution to and furtherance thereof. Defendants' wrongful acts include, inter alia, all of the acts that each of them are alleged to have committed in furtherance of the wrongful conduct of complained of herein." (SAC ¶22.) When considering the allegations in the SAC in conjunction with the allegations in the cross-complaint, Aldea Homes and TKR Properties have sufficiently pled facts to support their indemnification and declaratory relief causes of action.

Wells Fargo shall file and serve its answer or general denial to the cross-complaint on or before July 20, 2014.

Wells Fargo's request for telephonic appearance is granted. Counsel is informed that all telephonic appearances are governed by and must be arranged under Placer Court Local Rule 20.8. Further information on the telephonic appearance process under Local Rule 20.8 is available at www.placer.courts.ca.gov.

5. S-CV-0032596 Azevedo, Richard J. Trustee, et al vs. Kutzman, Michael T.

Plaintiffs' unopposed Motion to for Leave to File Third Amended Complaint is granted. Plaintiffs shall file and serve their third amended complaint on or before July 18, 2014.

6. S-CV-0032982 MTAD Investments Inc., et al vs. True North Bridged Tech.

Plaintiffs' unopposed Motion for Leave to Amend Complaint is granted. Plaintiffs shall file and serve their first amended complaint on or before July 18, 2014.

The motion to be relieved as counsel is dropped from the calendar as no moving papers were filed with the court.

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7. S-CV-0033186 Duncan, Bruce vs. Nationstar Mortgage, LLC

As an initial matter, the court drops the motion to compel responses to request for production of documents. There were no separate moving papers filed for such a motion.

Defendant's Motion to Compel Responses to Form Interrogatories and Requests for Production of Documents

Defendant's unopposed motion is granted. Plaintiff shall provided verified responses and responsive documents, without objections, to form interrogatories, set one and requests for production of documents, set one, on or before July 18, 2014.

Sanctions are denied because the motion was not opposed. (CCP§2030.290(c); 2031.300(c).) However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

Defendant's Motion to Have Requests for Admissions Deemed Admitted

The unopposed motion is granted. The matters encompassed in defendant's requests for admissions, set one are deemed admitted. Sanctions in the amount of \$1,011.00 are imposed on plaintiff Bruce Duncan pursuant to CCP§2033.280(c).

8. S-CV-0033202 Thomas, Mieko vs. Godfrey, Dawn R.

The motion to quash subpoena is continued, on the court's own motion, to July 10, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

9. S-CV-0033287 Davis, Harold W., et al vs. Hess, Kimberly A., et al

Defendants' William L. Lyon & Associates, Inc. and Pearl Hubred's unopposed Motion for Order Determining Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasors' proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

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10. S-CV-0033534 Centex Homes, et al vs. Ad Land Corp.

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be heard on **Tuesday, July 8, 2014 at 8:30 a.m. in Department 42:**

Centex's Motion for Leave to File Second Amended Complaint (SAC)

Ruling on Request for Judicial Notice

Centex's request for judicial notice is granted in its entirety pursuant to Evidence Code section 452.

Ruling on Motion

Centex's unopposed motion is granted. The court may permit a party to amend its operative pleading in the furtherance of justice and on such terms as may be just. (*Code of Civil Procedure section 473(a)(1); Code of Civil Procedure section 576.*) The moving party must also show that the amendment will not prejudice any opposing party. (*Douglas v. Superior Court (1989) 215 Cal.App.3d 155, 158.*) Courts have broad discretion in granting leave to amend a pleading and such discretion is usually exercised liberally to permit amendment to the pleading. (*Howard v. County of San Diego (2010) 184 Cal.App.4th 1422, 1428.*) After careful review the moving papers, supporting declarations, and notices of errata, the court finds good cause to allow Centex to file the proposed SAC. The motion has been brought in a timely fashion, the proposed amendments are appropriate, the motion comports with the requirements of California Rules of Court, Rule 3.1324, and there is no showing of prejudice to any of the defendants.

Centex shall file and serve its SAC on or before July 11, 2014.

11. S-CV-0033672 Weckter, Victoria, et al vs. Cline, Judson H., et al

Petition for Minor's Compromise Regarding Trevor Weckter

The petition is granted. If oral argument is requested, the appearance of the minor at the hearing is waived.

Petition for Minor's Compromise Regarding Victoria Weckter

The petition is granted. If oral argument is requested, the appearance of the minor at the hearing is waived.

12. S-CV-0033842 Sweda, John L., et al vs. Ford Motor Company

The demurrer, motion to strike, motion for protective order, and motion to compel further discovery are continued, on the court's own motion, to July 10, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

13. S-CV-0033966 Smith, Lawrence E. vs. Calif. Dept. of Corrections, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be heard in Department 43:

Defendants' Demurrer to the First Amended Complaint (FAC)

Ruling on Request for Judicial Notice

Defendants request for judicial notice is granted.

Ruling on Demurrer

Defendant demurs to the first cause of action for intentional tort and second cause of action for general negligence based upon the statute of limitations, immunity under Government Code §845.8, uncertainty, and failure to state a cause of action. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure §430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The FAC is reviewed with these principles in mind.

Both the first and second causes of action are governed by a two-year statute of limitations. (*Code of Civil Procedure* §335.1.) "A demurrer based on a statute of limitations is appropriate if the ground appears on the face of the complaint or from matters of which the court may or must take judicial notice." (*Aaronoff v. Martinez-Seftner* (2006) 136 Cal.App.4th 910, 918.) As currently pled, both causes of action appear to be barred by the statute of limitations. " 'Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] 'Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not "accrue until the party owning it is entitled to begin and prosecute an action thereon." ' [Citation.] In other words, '[a] cause of action accrues "upon the occurrence of the last element essential to the cause of action." ' [Citations.]' [Citation.]" (*Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 815.) The allegations in the FAC do not remediate the deficiencies that were identified in conjunction with defendant Anthony Kaestner's previous demurrer. In point of fact, the FAC now omits previous allegations that identified plaintiff as learning Kidd stole his identity in 2011. "The courts ... will not close their eyes to situations where a complaint

contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed.” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) “Thus, a pleading valid on its face may nevertheless be subject to demurrer when matters judicially noticed by the court render the complaint meritless.” (*Ibid.*) This is the exact circumstance in this instance, the prior complaint included inconsistent allegations and this court cannot turn a blind eye to this fact.

As the court noted in the prior demurrer, a public entity/public employee is not liable for any injury resulting from the determination whether to parole or release a prisoner, the determination of the terms and conditions of parole or release, or the determination whether to revoke the parole or release. (*Government Code §845.8(a).*) The immunity under Section 845.8 is described as “absolute”, applying to ministerial and discretionary acts. (*Kisbey v. State of California* (1984) 36 Cal.3d 415, 418-419.) The allegations in the FAC are insufficient to plead around this immunity. For these reasons, the demurrer is sustained.

The final issue to address is whether plaintiff should again be afforded leave to amend. Plaintiff was given a prior opportunity to allege the causes of action in his operative pleading but was unable to remedy the deficiencies. Instead, plaintiff created further inconsistencies by omitting allegations. Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) A demurrer will be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Upon careful review of the FAC and arguments posed by plaintiff in his opposition, the court cannot determine that a reasonable possibility exists that the defects may be remedied by granting further leave. For these reasons, the demurrer is sustained without leave to amend.

14. S-CV-0034134 Nicolatti, Caroline vs. Future Ford Lincoln

The demurrer is continued, on the court’s own motion, to July 10, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

15. S-CV-0034007 Watt, James Kin Sing vs. Suede Blue, Inc.

This tentative ruling is issued by the Honorable Colleen M. Nichols. If oral argument is requested, it shall be heard on July 3, 2014 at 8:30 a.m. in Department 4.

Defendant Suede Blue, Inc.’s Motion for Stay of Eviction is denied.

Judgment in this unlawful detainer action was entered on May 29, 2014, in favor of plaintiff James Kin Sing Watt, as Trustee of the James Kin Sing Watt 2007 Living Trust (“Watt”) and against defendant Suede Blue, Inc. (“Suede Blue”). On June 6, 2014, Suede Blue filed a notice of appeal from the judgment. Appeal from an unlawful detainer judgment does not automatically stay enforcement of the judgment. Defendant must

request a stay pursuant to Code of Civil Procedure section 1176. The motion shall be granted if the court finds that the defendant will suffer extreme hardship in the absence of a stay, and that plaintiff will not be irreparably injured by its issuance.

In support of the application, Suede Blue submits the declaration of Azita Alizadeh, the manager of defendant. Ms. Alizadeh declares that defendant's staff "has included" 97 different employees in various positions. It is unclear from the declaration how many are currently employed by Suede Blue. Ms. Alizadeh does not provide additional details regarding the various employees, for example, whether current employees are employed full-time or part-time. Ms. Alizadeh declares that if the stay is not granted, she would be forced to lay off a number of employees, which would have a negative impact on those employees' families. With respect to the restaurant itself, Ms. Alizadeh states that if the stay is not granted, "it would take a long time to find a suitable place, work out a lease agreement, design and build out the space."

A showing of extreme hardship requires something more than imminent eviction and inconvenience. While Ms. Alizadeh vaguely describes hardship that may befall other individuals or businesses, Ms. Alizadeh's declaration falls short of demonstrating that Suede Blue will experience an extreme hardship beyond the inherent hardship that accompanies any eviction of a commercial tenant.

The court also notes that Suede Blue has submitted the declaration of Scott Cash, a real estate broker. This declaration is untimely, as it was filed only three court days prior to the originally scheduled hearing date. Moreover, Mr. Cash's declaration provides no additional information with respect to any hardship that would be suffered by Suede Blue if the stay were not granted.

Denial of a stay may also be an abuse of discretion where substantial issues are presented by defendant's appeal. *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1050. Suede Blue fails to demonstrate that any substantial issue would be presented by the appeal. In fact, Ms. Alizadeh's declaration comes close to stating that she is merely acting to "buy some time" for the benefit of her current employees. (Alizadeh decl., ¶ 6.)

Based on the foregoing, Suede Blue's application is denied. The stay of eviction issued on June 10, 2014 is hereby dissolved.

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This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard on July 3, 2014 at 8:30 a.m. in Department 43.

U.S. Bank, N.A., et al.'s Demurrer to First Amended Complaint

U.S. Bank, N.A., Wells Fargo Bank, N.A., and Mortgage Electronic Registration Systems, Inc.'s request for judicial notice is granted.

U.S. Bank, N.A., Wells Fargo Bank, N.A., and Mortgage Electronic Registration Systems, Inc.'s Demurrer to First Amended Complaint is sustained without leave to amend.

Plaintiffs allege three causes of action, wrongful foreclosure, declaratory relief, and violation of Business and Professions Code sections 17200, *et seq.* As admitted by plaintiffs, the allegations of the first amended complaint ("FAC") are based entirely on the holding in *Glaski v. Bank of America, N.A.* (2013) 218 Cal.App.4th 1079. To that end, plaintiffs allege that the closing date to assign the subject promissory note and deed of trust to the subject trust in this case was April 30, 2007, and that acceptance of the subject note and deed of trust 90 days after the date the trust closed would be a void act under New York law and the terms of the Pooling and Service Agreement ("PSA.") (FAC, ¶¶ 37-40.) Plaintiffs further allege that the assignment in this case was done more than 90 days after the closing date, that the original promissory note, deed of trust, and assignment were not delivered and were not duly endorsed as required by the PSA. (*Id.*, ¶¶ 40-42.) These allegations form the basis of each of plaintiffs' causes of action.

California's nonjudicial foreclosure statutes provide a comprehensive framework for the regulation of nonjudicial foreclosures. Civ. Code §§ 2924-2924k; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1154. This scheme does not provide for judicial action to determine whether the person initiating the foreclosure process is so authorized. *Gomes, supra*, 192 Cal.App.4th at 1155; *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 513. *Glaski v. Bank of America, N.A.* (2013) 218 Cal.App.4th 1079, relied on by plaintiffs, is distinguishable in that *Glaski* involved a post-foreclosure action for damages, which did not implicate the statutory policy of providing the beneficiary with quick, inexpensive and efficient methods of foreclosure. *Keshtgar v. U.S. Bank, N.A.*, -- Cal.Rptr.3d -- (2014 WL 2567927).

Moreover, plaintiffs have no standing to challenge the subject assignment. *Id.* at 3; *Yvanova v. New Century Mortgage Corp.* (2014) 226 Cal.App.4th 495, 501-502; *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 515 ("[a]s an unrelated third party to the alleged securitization, and any other subsequent transfers of the beneficial interest under the promissory note, [plaintiff] lacks standing to enforce any agreements, including the investment trust's pooling and servicing agreement, relating to such transactions.") Plaintiffs' obligations under the note and deed of trust remain unchanged, even if the assignments were invalid.

Borrowers lack standing to challenge an assignment absent a showing of prejudice. *Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) 219 Cal.App.4th 75, 86; *Herrera v. Federal Nat'l Mortgage Ass'n* (2012) 205 Cal.App.4th 1495, 1507; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 271. Plaintiffs fail to allege any facts showing that they suffered prejudice as a result of the subject assignment. Plaintiffs do not dispute that they are in default of their obligations under the note.

The holding in *Glaski*, relied upon by plaintiffs, has been expressly disagreed with by subsequent published appellate court decisions, including *Yvanova* and *Keshtgar*. As noted by plaintiffs, the *Glaski* decision relies heavily on *Wells Fargo Bank, N.A. v. Erobo*, 39 Misc.3d 1220(A) (N.Y. Sup. Ct. 2013), a decision by a New York trial court, the reasoning and holding of which has since been called into doubt. *See Koufos v. U.S. Bank, N.A.*, 939 F.Supp.2d 40 (D.Mass. 2013). As it is inconsistent and conflicts with the majority line of cases on this issue, the court declines to follow the holding in *Glaski*. Because each of plaintiffs' causes of action rests on the contention that the failure to assign the note and deed of trust within to the trust within the timeframe required by the PSA made the assignments invalid, the FAC fails to state any causes of action upon which relief may be granted.

Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiffs that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The first amended complaint does not suggest on its face that it is somehow capable of amendment and plaintiffs have failed to make any showing that it can be amended to change its legal effect. Based on the foregoing, U.S. Bank, N.A., Wells Fargo Bank, N.A., and Mortgage Electronic Registration Systems, Inc.'s Demurrer to First Amended Complaint is sustained without leave to amend.

Bank of America, N.A.'s Demurrer to First Amended Complaint

Bank of America, N.A.'s request for judicial notice is granted.

Bank of America, N.A.'s Demurrer to First Amended Complaint is sustained without leave to amend.

Plaintiffs allege three causes of action, wrongful foreclosure, declaratory relief, and violation of Business and Professions Code sections 17200, *et seq.* As admitted by plaintiffs, the allegations of the first amended complaint ("FAC") are based entirely on the holding in *Glaski v. Bank of America, N.A.* (2013) 218 Cal.App.4th 1079. To that end, plaintiffs allege that the closing date to assign the subject promissory note and deed of trust to the subject trust in this case was April 30, 2007, and that acceptance of the subject note and deed of trust 90 days after the date the trust closed would be a void act

under New York law and the terms of the Pooling and Service Agreement (“PSA.”) (FAC, ¶¶ 37-40.) Plaintiffs further allege that the assignment in this case was done more than 90 days after the closing date, that the original promissory note, deed of trust, and assignment were not delivered and were not duly endorsed as required by the PSA. (*Id.*, ¶¶ 40-42.) These allegations form the basis of each of plaintiffs’ causes of action.

California’s nonjudicial foreclosure statutes provide a comprehensive framework for the regulation of nonjudicial foreclosures. Civ. Code §§ 2924-2924k; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1154. This scheme does not provide for judicial action to determine whether the person initiating the foreclosure process is so authorized. *Gomes, supra*, 192 Cal.App.4th at 1155; *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 513. *Glaski v. Bank of America, N.A.* (2013) 218 Cal.App.4th 1079, relied on by plaintiffs, is distinguishable in that *Glaski* involved a post-foreclosure action for damages, which did not implicate the statutory policy of providing the beneficiary with quick, inexpensive and efficient methods of foreclosure. *Keshtgar v. U.S. Bank, N.A.*, -- Cal.Rptr.3d – (2014 WL 2567927).

Moreover, plaintiffs have no standing to challenge the subject assignment. *Id.* at 3; *Yvanova v. New Century Mortgage Corp.* (2014) 226 Cal.App.4th 495, 501-502; *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 515 (“[a]s an unrelated third party to the alleged securitization, and any other subsequent transfers of the beneficial interest under the promissory note, [plaintiff] lacks standing to enforce any agreements, including the investment trust’s pooling and servicing agreement, relating to such transactions.”) Plaintiffs’ obligations under the note and deed of trust remain unchanged, even if the assignments were invalid.

Borrowers lack standing to challenge an assignment absent a showing of prejudice. *Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) 219 Cal.App.4th 75, 86; *Herrera v. Federal Nat’l Mortgage Ass’n* (2012) 205 Cal.App.4th 1495, 1507; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 271. Plaintiffs fail to allege any facts showing that they suffered prejudice as a result of the subject assignment. Plaintiffs do not dispute that they are in default of their obligations under the note.

The holding in *Glaski*, relied upon by plaintiffs, has been expressly disagreed with by subsequent published appellate court decisions, including *Yvanova* and *Keshtgar*. As noted by plaintiffs, the *Glaski* decision relies heavily on *Wells Fargo Bank, N.A. v. Erobobo*, 39 Misc.3d 1220(A) (N.Y. Sup. Ct. 2013), a decision by a New York trial court, the reasoning and holding of which has since been called into doubt. *See Koufos v. U.S. Bank, N.A.*, 939 F.Supp.2d 40 (D.Mass. 2013). As it is inconsistent and conflicts with the majority line of cases on this issue, the court declines to follow the holding in *Glaski*. Because each of plaintiffs’ causes of action rests on the contention that the failure to assign the note and deed of trust within to the trust within the timeframe required by the PSA made the assignments invalid, the FAC fails to state any causes of action upon which relief may be granted.

Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiffs that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The first amended complaint does not suggest on its face that it is somehow capable of amendment and plaintiffs have failed to make any showing that it can be amended to change its legal effect. Based on the foregoing, Bank of America, N.A.'s Demurrer to First Amended Complaint is sustained without leave to amend.

If oral argument is requested, Bank of America, N.A.'s request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8. More information is available at the court's website: www.placer.courts.ca.gov.

17. S-CV-0034394 Lehner, Christopher, et al vs. Wilson, Douglas

Defendant's unopposed Motion to Set Aside Default is granted. The court finds mistake, inadvertence, surprise, and/or excusable neglect in this instance. The default entered on April 14, 2014 is set aside.

Defendant shall file and serve his responsive pleading on or before July 18, 2014.

18. S-CV-0034452 Gonzalez, Francisco - In Re the Petition of

The petition for minor's compromise is dropped from the calendar as no notice scheduling the petition hearing date was filed with the court.

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